"... Proceedings by way of *certiorari* with regard to industrial disputes are not as of right otherwise they may materially affect the fundamental basis of the decision of the Industrial Court under the Industrial Relations Act, 1967, namely, quicker solution to industrial dispute to achieve industrial peace. The Act is intended to be a self-contained one. It seeks to achieve social justice on the basis of collective bargaining, conciliation and arbitration. Awards are given in circumstances peculiar to each dispute and the Industrial Court is to a large extent free from the restrictions and technical considerations imposed on ordinary courts. The jurisdiction of the High Court to issue orders of *certiorari* is neither an appellate nor a revisional jurisdiction. Also from the very nature of the power conferred under section 25 of the Courts of Judicature Act, 1964, it is clear that in exercise of this power the High Court exercised original jurisdiction. This jurisdiction stems from the prerogative jurisdiction inherited from the United Kingdom courts and its object is mainly to enable the superior courts to keep inferior tribunals within the bounds of their authority. The supervisory character is essential for always in the background there is the beguiling illusion that an inferior tribunal entrusted to hand down awards of a final nature may hand down awards as it likes. Therefore the jurisdiction may for convenience be described as an extraordinary original jurisdiction. The circumstances under which the High Court can interfere with the decision of the Industrial Court are limited. For instance, it has no jurisdiction under section 25 of the Courts of Judicature Act to interfere with the findings of fact reached by the Industrial Court on the ground that the decision is erroneous except where there is a clear error of law on the face of the record. It cannot arrogate the powers of a Court of Appeal by substituting its own judgment for that of the Industrial Court on questions of fact and cannot review the evidence."

The present proceedings before me were preliminary to the actual hearing on the order of *certiorari* to quash the award of the Industrial Court. Still it was incumbent upon the applicants to show a *prima facie* case in support of their application for leave to apply for an order of *certiorari*. It is not true to say that the Industrial Court refused to hear the applicants' case. Both parties were represented before the Industrial Court and they had filed written statements together with various documentary exhibits. The notes of evidence showed that at the continued hearing on August 17, 1976 the court found no purpose in continuing to hear more witnesses if, as the court found on the representations made by the parties, it was the applicants' contention that the best the applicants could offer the drivers and conductors was a wage-structure consisting of a basic pay plus commission by percentage totalling not less than the wages received at the present rate if not more as calculated and shown in a document which was exhibited. The applicants' representative before the Industrial Court contended that they could not meet any other wage-structure because of the applicants' financial position as shown in the profit and loss accounts for 1975. The Industrial Court therefore required the applicants to produce all statements of accounts from 1968 to 1975 as compared with their position 10 years previously in 1958 all of which were subsequently produced for examination by the Industrial Court. The Industrial Court also obtained other documents relevant to the applicants' case such as summaries of monthly bus revenue, list of taxis, lorries, office car and jeep, recurrent expenses for buses from 1968 to 1974 and diesel prices from 1972 to 1976. Summaries of monthly collections on routine buses were also obtained for 1974 and 1975 before and after the increase of fares in April 1974 and the list of 8 new buses bought after 1970 and the list of 5 working directors. On the face of the record therefore it was quite clear that the Industrial Court had given every opportunity to the applicants to present their case and when it found that there was no purpose in prolonging this case any further as it had all the evidence required for the purpose of making its award it made its position clear on April 17, 1976 that it would make its award in due course on the evidence it had heard.

The Industrial Court had in no way acted arbitrarily or without jurisdiction or in excess of jurisdiction and there certainly was no error of law on the face of the record. There was also nothing to support the allegation that there had been a breach of the rules of natural justice. The Industrial Court had heard both parties and in making its award the court had considered the written case put up by the Transport Workers' Union, the written reply thereto by the applicants and all the other evidence recorded at the hearing including the documentary exhibits tendered. The applicants had altogether failed to substantiate any of their allegations against the Industrial Court in seeking leave to apply for an order of *certiorari* and I therefore dismissed their application.

Application dismissed.

Solicitors: *Mustapha, T.C. Saw & Co.*

PUBLIC PROSECUTOR v. PHUNG CHIN HOCK

[O.Cr.J. (Abdul Hamid J.) May 17, 1977]

[Kuala Lumpur — Federal Territory Criminal Trial No. 39 of 1976]

Criminal Law and Procedure — Charge of possession of ammunition — Whether Internal Security Act, 1960 is still in force — Whether proclamation of emergency on 15th May 1969 still in force — Internal Security Act, 1960, s. 57 — Constitution (Amendment) Act, 1960.

Constitutional Law — Amendment to Constitution — Whether amendment to constitution made by Constitution (Amendment) Act, 1960, valid — Whether contrary to Constitution — Federal Constitution, Art. 159.

In this case the accused was charged with the offence of unlawful possession of ammunition, an offence under the Internal Security Act, 1960. It was argued as a preliminary point that the amendments made to Articles 149 and 150 of the Federal Constitution by the Constitution (Amendment) Act, 1960 were invalid as being contrary to the Constitution and therefore as a result the Internal Security Act, 1960 and the Proclamation of Emergency on 15th May 1969 have both lapsed.

Held: (1) Article 159 of the Federal Constitution clearly allows the Constitution to be amended by Federal law. The Constitution (Amendment) Act, 1960 was passed pursuant to and in accordance with the provisions of the Constitution and is therefore valid;

(2) on the facts it had been proved beyond reasonable doubt that the accused had possession of the ammunition and no doubts had been cast as to the prosecution case by the defence story.

Case referred to:-

(1) *Johnson Tan Han Seng* v. *Public Prosecutor & Ors. cases* [1977] 2 M.L.J. 66.

CRIMINAL TRIAL.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the Public Prosecutor.

G.T.S. Sidhu for the accused.

Abdul Hamid J.: The accused Phung Chin Hock @ Phoy Chin Hock @ Ah Tee was convicted on the following charge —

"That you on April 24, 1976 at about 4.00 p.m. at house No. 6, Jalan 24, Overseas Union Garden, Kuala Lumpur in the Federal Territory being a Security Area as proclaimed by the Yang di-Pertuan Agong vide P.U.(A)149 dated March 15, 1969, without lawful excuse did have in your possession ammunition to wit six rounds of .38 special ammunition without lawful authority and thereby committed an offence punishable under section 57(1)(b) of the Internal Security Act No. 82 (Revised 1972)."

Upon conviction he was sentenced to death.

Before I deal with the merits of the case it is convenient at this point to refer to the preliminary issue on point of law raised by Mr. G.T.S. Sidhu counsel for the defence. They are as follows —

(a) That by reason of Article 4 of the Federal Constitution no amendment inconsistent with the provisions of the Constitution is valid and therefore the amendment made to Article 149(2) by Section 28(b) of Act No. 10 of 1960 is void and as such the Internal Security Act, 1960 was only valid for a year and was not in existence at the time the offence was committed by the accused;

(b) That by reason of Article 4 the amendment made to Article 150(3) is void and therefore the proclamation of Emergency on May 15, 1969 had lapsed after a period of two months; and

(c) That if Article 4 does not apply, the amendments to both Article 149(2) and Article 150(3) are still void in that they destroy the basic structure of the Federal Constitution or have opened the door for such destruction.

Act No. 10 of 1960 entitled the Constitution (Amendment) Act, 1960 was passed by Parliament and brought into force on May 31, 1960 (L.N. 116/60). Sections 28(b) and 29 of the Act amended Articles 149(2) and 150(3) of the Federal Constitution respectively.

It is submitted that these two amendments are *ultra vires* the Constitution on the ground that they were inconsisent with the Constitution. With all respect to the counsel I fail to see any merit in his argument. Article 159 of the Constitution clearly allows the Constitution to be amended by Federal law. Act No. 10 of 1960 was such a law. It was passed by both Houses of Parliament pursuant to and in accordance with the provisions of the Constitution and in no way inconsistent with Article 4 of the Federal Constitution. Consequent upon the amendments they formed part of the provisions of the Constitution.

The Internal Security Act, 1960 was passed by Parliament in 1960 and brought into force on August 1, 1960 after the coming in force of Act No. 10/1960.

The contention that the proclamation of Emergency of May 15, 1969 had lapsed after a period of two months as the amendment to Article 150(3) was, by reason of Article 4 of the Constitution void, also lacks substance as the making of such proclamation and its continued existence thereafter was in conformity with the existing provisions of the Constitution.

It is clear from the recent judgment of Suffian L.P. in *Johnson Tan Han Seng* v. *Public Prosecutor & Other Cases*[1] that the court recognized the validity of Clause 3 of Article 150 when he stated —

"With respect I do not agree that the 1969 proclamation and the Ordinance have lapsed and are no longer in force. In the words of clause (3) of article 150 'a proclamation of emergency and any ordinance promulgated under clause (2) ... if not sooner revoked, shall cease to have effect if resolutions are passed by both Houses [of Parliament] annulling such proclamation or ordinance ...', and in the words of clause (7) of the same article 'At the expiration of a period of six months beginning with the date on which a Proclamation of Emergency ceases to be in force, any ordinance promulgated in pursuance of the Proclamation ... shall cease to have effect ..'. In my view these words mean —

(1) that a proclamation of emergency ceases to have effect only —
   (a) if revoked or
   (b) Parliament by resolution annuls it; and
(2) that an ordinance ceases to have effect if —
   (a) revoked, or
   (b) Parliament by resolution annuls it, or further
   (c) if the proclamation in pursuance of which it was promulgated has ceased to have effect and six months have elapsed.

The 1969 proclamation has not been revoked nor annulled by Parliament. The ordinance has not been revoked nor annulled. Therefore in my view they are still in force."

As for the contention that even if 'Article 4 does not apply to the amendments they are still void in that they destroy the basic structure of the Federal Constitution I have, after careful perusal of the submission put forward before this court, formed the view that there is no substance in the argument. There are absolutely no grounds for suggesting that the amendments would destroy the basic structure of the Federal Constitution having regard to the fact that these amendments were properly made pursuant to and in accordance with the provisions of the Constitution.

I shall now turn to the merits of the case. The prosecution adduced evidence to show that on April 24, 1976 at about 3.15 p.m. DSP Syed Meir with a party of police went to house No. 6 Jalan 24 Overseas Union Garden Kuala Lumpur. There were two or three Chinese youths on the balcony of the house. Syed Meir called out to the occupants of the house to surrender. He also instructed Det/Cpl. Loh Tat Man to call out in Chinese for them to surrender. At that time some gun shots were fired from the house. The police party returned fire. After a lapse of about 20 minutes Syed Meir again called out to them to surrender. More shots were fired. Syed Meir ordered teargas to be fired. When there was a lull in shooting Syed Meir together with Rafik Khan entered the house. As they were about to climb up the stairs a Chinese youth at the top of the stairs took a shot at them. Syed Meir retreated and took cover. About five minutes later a Chinese youth came running out of the house towards the car and was firing a revolver. The police party returned fire. The man was shot dead and a pistol was found in his hand.

Syed Meir then called out to the others to come out. A short while later six males, two females and one child came out from the front door. The men were made to lie down on the road. The accused was the first to be searched, Syed Meir searched the accused in the presence of Rafik Khan. Syed Meir testified that the accused was wearing green long pants (Ex. P9). In the waist pocket Syed Meir found six .38 ammunitions, coins 75 cents and a key. There were other ammunitions found in the house after the accused was interrogated. These ammunitions were the subject matter of the second charge. I acquitted and discharged the accused on this charge on the ground that the circumstances leading to the discovery had cast some doubt that they were under the control of the accused.

Syed Meir handed the ammunitions and other exhibits to Insp. Takbir Ahmad.

Syed Meir was subjected to lengthy cross-examination especially in regard to the trousers worn by the accused to show that the green trousers did not really belong to the accused.

Under cross-examination Syed Meir stated that the six bullets were still in the trousers after he recovered the trousers from the accused. The trousers and the six bullets were subsequently handed to Insp. Takbir Ahmad. Defence counsel suggested that there was a pair of pink or red coloured trousers but Syed Meir could not recollect there was one.

When re-examined Syed Meir stated that from the time he took possession of the green trousers until he handed it to Insp. Tasbir Ahmad he had it with him.

Rafik Khan gave evidence substantiating the testimony given by Syed Meir. He confirmed that Syed Meir found six .38 bullets in a small waist pocket of the green trousers worn by the accused.

Under cross-examination Rafik Khan stated that all the pants worn by the male Chinese who were searched were recovered. He denied that all the trousers were removed before the search. Rafik Khan repeated his earlier statement that the green trousers were worn by the accused.

The accused gave his evidence on oath. He denied that the green trousers belonged to him. He maintained that he was wearing red trousers on the day in question. The accused also denied that he had the bullets in his pocket. He alleged that Syed Meir caught hold of his hair, pushed him to the ground and took off his trousers, and after feeling it threw it aside.

The accused also alleged that he was assaulted at the police station and was asked whether his trousers was among the heap of things at the corner. He pointed out to one but not the green trousers. He further alleged that Syed Meir told him he had six bullets.

When questioned by the court the accused said that he had never tried or put it on before. The accused was requested to put on the green trousers in court and I observed that it fitted the accused perfectly.

One Loh Tat Man of High Street Police Station was called as a witness for the defence. He testified that he was in the police party led by Syed Meir to No. 6 Jalan 24 Overseas Union Garden Kuala Lumpur. According to him all the six persons including the accused had their trousers on when they were taken to the police station. This conflicted with the accused's own testimony that his trousers were removed by Syed Meir.

Nonetheless having heard the whole of the evidence produced before the court I formed the view that both Syed Meir and Rafik Khan had told the court the truth and it is my finding of fact that the accused was wearing the green trousers (Ex. P9) and the six bullets were in fact found from the small waist pocket of the green trousers. I am also satisfied beyond any reasonable doubt that the ammunitions recovered from the accused's trouser pockets are amongst those bullets that have been produced before the court.

The defence story has not cast any doubt as to the prosecution case and it is my judgment that the accused did have in possession six rounds of .38 special ammunitions without lawful authority. For these reasons I convicted the accused and sentenced him to death.

Order accordingly.

Solicitors: *Khoo & Sidhu.*

E.K. SDN. BHD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Gunn Chit Tuan J.) July 12, 1977]
[Penang — Tax Appeal No. 2 of 1976]

Revenue Law — Money received in advance in accordance with terms of lease — Whether income in respect of rent — Income Tax Act, 1967, ss. 4(d) and 27(3).

The question for decision in this appeal was whether a sum of money received in advance by the appellant in the year 1973 in accordance with the terms of a lease dated February 21, 1973 entered into between the appellant as lessor and Caltex Oil Malaysia Ltd. as lessee constituted income in respect of rent within the meaning of section 4(d) of the Income Tax Act, 1967 and was therefore assessable to income tax in the year of assessment 1974 under section 27(3) of the said Act.

Held: the sum in question came within the definition of "rent" and was therefore income. It followed that under section 27 of the Income Tax Act, 1967, it was assessable to income tax, in the year of assessment 1974.

Cases referred to:-

(1) *Sharikat K.M. Bhd.* v. *Director-General of Inland Revenue* [1972] 1 M.L.J. 224, 226.
(2) *Morley* v. *Tattersall* 22 T.C. 51.
(3) *Jay's — the Jewellers Ltd.* v. *Commissioners of Inland Revenue* 29 T.C. 274.
(4) *De Nicholls* v. *Saunders,* (1870) L.R. 5 C.P. 589.

TAX APPEAL.

Tan Phock Kin for the appellant.

Bakarudin bin Sulaiman (Federal Counsel) for the respondent.

Gunn Chit Tuan J.: The sole question in this appeal by way of case stated under paragraphs 34